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10/588,692	12/14/2006	Robert Neugebauer	NEUGEBAUER ET AL-I PCT	9668
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EXAMINER				
HAND, MELANIE JO				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,692

Applicant(s)

NEUGEBAUER ET AL.

Examiner

MELANIE J. HAND

Art Unit

3761

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 20, 21, 29, 31-33, 44, 53-55, 59, 61 and 64-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 20, 21, 29, 31-33, 44, 53-55, 59, 61, 64-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/18/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on December 18, 2006 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.
3. It is noted that the prior art reference cited against the claims is not any of the 'X' references provided in the international search report for the parent PCT application. It is examiner's position that the Tanzer reference cited against the claims is a more relevant prior art reference.

Specification

4. The disclosure is objected to because of the following informalities: the phrase "have an identical with regard to" in paragraph 0121 of the specification appears to be missing at least one word.
5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no antecedent basis for the following: (1) the phrase "right through", (2) the phrase "at least substantially", (3) the phrase "perceptibly broader"
- 6.

Appropriate correction is required.

Claim Objections

7. Claim 29 is objected to because of the following informalities: the claim contains grammatical errors and the phrase "right through", which is unclear. Appropriate correction is required.
8. Claim 32 is objected to because of the following informalities: the phrase "which carry has" contains a typographical error.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 40 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 40 recites at least one spot is provided at each level running in the machine direction over the effective width of the carrier. However the specification sets forth that when there is at least one spot at each level, in that embodiment there are no buckling lines (interpreted herein as being the same as the recited bending lines) in the longitudinal direction of the fastener and "in plastic terms there is thus no gap between the spots in the direction of view along the direction

of the longitudinal extent of the tape. It is examiner's position, since applicant did not disclose otherwise, that by "in plastic terms" is meant that there is no area where a change in flexibility or deformation could occur, which necessarily excludes the presence of a bending or buckling line in the lateral width direction as well, which is recited in claim 1 from which claim 40 depends.

11. Claim 59 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Subject matter critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The disclosure merely alludes to fastener tapes in other foreign patents, which is not sufficient to enable any of the recited ranges for separation force for the adhesive adhering to the recited diaper.

12. Claim 64 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The way in which "at first spots are applied via a plurality of diaper-fastening tapes" critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). First, the tapes are not tapes until they are separated, a step recited later in the claim. Second, the spots are applied on the tape substrate material not via the diaper fastening tapes. It is unclear what is meant by "applied via the diaper fastening tapes".

13. Claim 67 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "perceptibly broader" appears nowhere in the disclosure as originally filed and therefore introduces new matter.

14.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

17. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As there is no antecedent basis for the phrase "right through", the precise meaning and scope of the phrase is unclear.

18. Claim 35 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As there is no antecedent basis for the phrase "at least substantially", the precise meaning and scope of the phrase "at least substantially in one direction" is unclear.

19. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear from the claim and the specification what the definition and scope of a level is, i.e. what are its physical bounds. Thus the scope of the claim is unclear and indefinite.

20. Regarding claim 53, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is also noted that the disclosure as originally filed does not appear to support separating by means other than cutting, however a rejection under 35 U.S.C. 112 was

not made because examiner has interpreted the phrase as including processes where separating does occur by cutting.

21. Regarding claims 53,67 the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). It is unclear what applicant intends the true scope of the claim to be.

22. Claim 59 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 59 recites the broad recitation "more than 0.05 N/cm²", and the claim also recites "preferably more than 0.1 N/cm²" and "especially preferably more than 0.15 N/cm²", both of which are the narrower statements of the range/limitation.

23. Claim 61 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 61 recites a diaper according to claim 55, however claim 55 does not set

forth any structural limitations for said diaper that would make the metes and bounds of claim 61 clear.

24. Regarding claim 67, the phrases in the claim beginning with "i.e." render the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

25. Claim 67 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "perceptibly broader" does not appear anywhere in the specification and therefore is neither supported nor defined.

Claim Rejections - 35 USC § 102

26. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

27. Claims 1, 20, 21, 29, 31-33, 44, 53-55, 61, 64 and 66-69 are rejected under 35

U.S.C. 102(a) as being anticipated by Tanzer et al (U.S. Patent Application Publication No. 2003/0009144)

With respect to **claim 1**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item. The fastener 60 has a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, the closing area having a mechanical fastening system comprising two components in the form of fastener islands 64 and adhesive disposed on layer 78, and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64 (Fig. 5), which carry a component of the mechanical fastening system, namely hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72, comprising a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (0068) The closing area disclosed by Tanzer comprises two areas in the closing area which carry components 64, 78 of different fastening systems. The one area, namely fastener islands 64, have a shear-off securing means and the other area, the collective area defined by adhesive areas 78, has a pop-off securing means. The closing area also comprises an edge carrier in the collective form of spots 64, 66, 68, 80 defining the edge of the closing area which is configured as edge spots, whereby at the same time the edge carrier forms a border of the carrier area along an edge section. (Fig. 5)

With respect to **claim 20**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item. The fastener 60 has a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, having a mechanical fastening system comprising two components, islands 64 and

adhesive areas disposed on layer 78 and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to the fastening carrier 72 via adhesive on surface 74 comprising a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (0068)

With respect to **claim 21**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, having a mechanical fastening system comprising two components, fastener islands 64 and adhesive areas on layer 78, and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72 wherein a bending line runs through the carrier area (¶0068), wherein in addition to one or more central spots, one or more edge spots 64,66,68,70,80 are provided with the mechanical fastening system components, also hooks. Tanzer discloses that the spots 64 extend "substantially the entire length of the fastener tape" and thus the edge spots would necessarily be provided at the tape edge.

With respect to **claim 29**: In light of the lack of definition and antecedent basis for the phrase "right through" and grammatical error present in the phrase "layer lies open adhesive layer between the spots", the claim is given its broadest reasonable interpretation. An adhesive layer disposed on surface 74 of fastener carrier 72 runs right through inside the entire carrier area

underneath the spot-shaped intermediate carrier 64 so that said layer defines an open adhesive layer between the spots.

With respect to **claim 31**: As can be seen in Fig. 4, the spots 64 disclosed by Tanzer have their own main direction of extent parallel to the longitudinal direction of the fastener 60.

With respect to **claim 32**: The phrase "which carry has" recited in the claim is interpreted herein as if it read "which carry" for examination purposes. Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, having a mechanical fastening system comprising two components, fastener islands 64 and adhesive areas on layer 78 and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to a fastening carrier 72 via adhesive on surface 74, wherein a bending line in the form of a "well-defined line of flexibility" runs through the carrier area (¶0068), the carrier area comprising circular spots 64 and at least one semicircular edge spot, e.g. 64,70, which lies with its chord necessarily running through the mid-point of the semi-circle along a boundary of the carrier area inasmuch as any line that extends from one point along the circumference of a circle to another point is a chord of the circular spot.

With respect to **claim 33**: The bending lines disclosed by Tanzer are "well-defined lines of flexibility" that are free of fastener islands 64. Thus, as can be seen in Fig. 5, there is at least

one bending line that lies
obliquely or normally to the direction of longitudinal extent of the fastener tape.

With respect to **claim 35**: Tanzer discloses that "well-defined lines of flexibility", i.e. bending lines run exclusively in one direction or at least substantially in one direction through the carrier area inasmuch as the lines are defined by areas free of fastener islands which, as can be seen in Fig. 5 may run in at least one direction, which meets the limitation "at least substantially in one direction."

With respect to **claim 40**: In light of the rejections of claim 40 under 35 U.S.C. 112 the claim is given its broadest reasonable interpretation. An intermediate carrier disclosed by Tanzer is configured as spots having a varying edge in the machine direction, whereby as seen in the direction of the longitudinal extent of the fastening tape, at least one spot is provided at each level running in the machine direction over the effective width of the carrier area. (Fig. 5)

With respect to **claim 44**: An intermediate carrier, the island material, for the closing system component 64 is formed by a separation in a first direction and by spaced-apart weakening via bending lines therebetween in a second direction as strip-shaped spots inasmuch as Tanzer discloses that the spots can be rectangular and may have lines free of fastener island 64.
(¶¶0019,0064)

With respect to **claim 53**: A strip material having a longitudinal direction of extent which can be divided by separating across the longitudinal direction of extent and substantially in the longitudinal direction of extent to form individual usages in the form of fastening tapes according

to Claim 1. With regard to the limitation "preferably without cutting", "preferably" is interpreted herein in the same manner as "optionally" i.e. the strip material can be separated into the fasteners with or without cutting. Thus, since Tanzer discloses cutting, Tanzer meets the limitation. (¶0099)

With respect to **claim 54**: Tanzer discloses a roll of strip material meeting all of the limitations of claim 53 for reasons stated *supra*. (¶0096)

With respect to **claim 55**: Tanzer discloses a diaper 20 having a fastening tape meeting all of the structural and functional limitations of claim 1. (Fig. 8)

With respect to **claim 61**: The phrase "and/or" is interpreted in an equivalent manner herein to the phrase as if it were written in proper alternative form. Tanzer discloses a method for closing a diaper meeting all of the structural and functional limitations of claim 55 inasmuch as Tanzer discloses a diaper 20 having a fastener that meets all of the structural limitations, wherein for closing the diaper 20, a connection is established between a closing area 82 of a diaper-fastening tape 60 on a diaper wing and a landing zone 86, preferably on a front section, wherein a surface area of a textile back sheet is selected as the landing zone. (¶0075)

With respect to **claim 64**: Tanzer discloses a method for producing a diaper-fastening tape meeting all of the structural and functional limitations of claim 1, wherein at first spots 64 are applied via (i.e. onto) a plurality of diaper-fastening tapes that are adjacent in the machine direction and then the tapes are separated to yield their final shape. (¶¶0097-0099)

With respect to **claim 66**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper 20 or an incontinence pad, having a fastening area in the form of manufacturer's bond edge 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item 20 (§10075), having a mechanical fastening system comprising two components, fastener islands 64 having hooks thereon and adhesive areas on layer 78. The fastening system comprises spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. said hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72 wherein a bending line in the form of a "well-defined line of flexibility" runs through the carrier area and wherein when viewed from the fastening area, the closing area 82 initially at least partially comprises hooks and otherwise an open adhesive surface. (Fig. 6)

With respect to **claim 67**: The intermediate carrier in the form of backing material 68 of said spots 64 in the rectangular shape disclosed by Tanzer, is completely separated into two or more strips along the first direction, wherein the strips are rectangular and thus lie parallel to the first direction and substantially parallel to one another (§10061), whereas in the second direction along the profile of the strips, the strips are provided with an edge variation in the form of a change in elevation between the island edge and the top of flexible layer 78. (Fig. 6)

With respect to **claim 68**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper 20 or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene

item (¶0075), having a mechanical fastening system comprising two components, islands 64 and adhesive areas of layer 78. The system comprises spot-shaped carriers 64 within a carrier area defined by said carriers 64, which carry a hook component of the mechanical fastening system and are in turn fastened to a fastening carrier in the form of first flexible layer 72, comprising a plurality of spots, in particular edge spots with a sharp-edged edge section inasmuch as Tanzer discloses that the islands 64 are rectangular (¶0061), which contain sharp edges with corner sections.

With respect to **claim 69**: The fastening tape disclosed by Tanzer meeting all of the structural and functional limitations of claim 68 comprises separated hooks on the edge section of the islands/carriers 64. (Fig. 6)

28. Claims 1, 20, 21, 29, 31-33, 35, 40, 44, 53-55, 61, 64 and 66-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Tanzer et al ('144).

With respect to **claim 1**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item. The fastener 60 has a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, the closing area having a mechanical fastening system comprising two components in the form of fastener islands 64 and adhesive disposed on layer 78, and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64 (Fig. 5), which carry a component of the mechanical fastening system, namely hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72, comprising a bending line running through

the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (§0068) The closing area disclosed by Tanzer comprises two areas in the closing area which carry components 64,78 of different fastening systems. The one area, namely fastener islands 64, have a shear-off securing means and the other area, the collective area defined by adhesive areas 78, has a pop-off securing means. The closing area also comprises an edge carrier in the collective form of spots 64,66,68,80 defining the edge of the closing area which is configured as edge spots, whereby at the same time the edge carrier forms a border of the carrier area along an edge section. (Fig. 5)

With respect to **claim 20**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item. The fastener 60 has a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, having a mechanical fastening system comprising two components, islands 64 and adhesive areas disposed on layer 78 and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to the fastening carrier 72 via adhesive on surface 74 comprising a bending line running through the carrier area in the form of "well-defined lines of flexibility", interpreted herein as bending lines. (§0068)

With respect to **claim 21**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item,

having a mechanical fastening system comprising two components, fastener islands 64 and adhesive areas on layer 78, and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72 wherein a bending line runs through the carrier area (¶10068), wherein in addition to one or more central spots, one or more edge spots 64,66,68,70,80 are provided with the mechanical fastening system components, also hooks. Tanzer discloses that the spots 64 extend "substantially the entire length of the fastener tape" and thus the edge spots would necessarily be provided at the tape edge.

With respect to **claim 29**: In light of the lack of definition and antecedent basis for the phrase "right through" and grammatical error present in the phrase "layer lies open adhesive layer between the spots", the claim is given its broadest reasonable interpretation. An adhesive layer disposed on surface 74 of fastener carrier 72 runs right through inside the entire carrier area underneath the spot-shaped intermediate carrier 64 so that said layer defines an open adhesive layer between the spots.

With respect to **claim 31**: As can be seen in Fig. 4, the spots 64 disclosed by Tanzer have their own main direction of extent parallel to the longitudinal direction of the fastener 60.

With respect to **claim 32**: The phrase "which carry has" recited in the claim is interpreted herein as if it read "which carry" for examination purposes. Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and

having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item, having a mechanical fastening system comprising two components, fastener islands 64 and adhesive areas on layer 78 and comprising spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. hooks, and are in turn fastened to a fastening carrier 72 via adhesive on surface 74, wherein a bending line in the form of a "well-defined line of flexibility" runs through the carrier area (¶0068), the carrier area comprising circular spots 64 and at least one semicircular edge spot, e.g. 64,70, which lies with its chord necessarily running through the mid-point of the semi-circle along a boundary of the carrier area inasmuch as any line that extends from one point along the circumference of a circle to another point is a chord of the circular spot.

With respect to **claim 33**: The bending lines disclosed by Tanzer are "well-defined lines of flexibility" that are free of fastener islands 64. Thus, as can be seen in Fig. 5, there is at least one bending line that lies obliquely or normally to the direction of longitudinal extent of the fastener tape.

With respect to **claim 35**: Tanzer discloses that "well-defined lines of flexibility", i.e. bending lines run exclusively in one direction or at least substantially in one direction through the carrier area inasmuch as the lines are defined by areas free of fastener islands which, as can be seen in Fig. 5 may run in at least one direction, which meets the limitation "at least substantially in one direction."

With respect to **claim 40**: In light of the rejections of claim 40 under 35 U.S.C. 112 the claim is

given its broadest reasonable interpretation. An intermediate carrier disclosed by Tanzer is configured as spots having a varying edge in the machine direction, whereby as seen in the direction of the longitudinal extent of the fastening tape, at least one spot is provided at each level running in the machine direction over the effective width of the carrier area. (Fig. 5)

With respect to **claim 44**: An intermediate carrier, the island material, for the closing system component 64 is formed by a separation in a first direction and by spaced-apart weakening via bending lines therebetween in a second direction as strip-shaped spots inasmuch as Tanzer discloses that the spots can be rectangular and may have lines free of fastener island 64. (¶¶0019,0064)

With respect to **claim 53**: A strip material having a longitudinal direction of extent which can be divided by separating across the longitudinal direction of extent and substantially in the longitudinal direction of extent to form individual usages in the form of fastening tapes according to Claim 1. With regard to the limitation "preferably without cutting", "preferably" is interpreted herein in the same manner as "optionally" i.e. the strip material can be separated into the fasteners with or without cutting. Thus, since Tanzer discloses cutting, Tanzer meets the limitation. (¶0099)

With respect to **claim 54**: Tanzer discloses a roll of strip material meeting all of the limitations of claim 53 for reasons stated *supra*. (¶0096)

With respect to **claim 55**: Tanzer discloses a diaper 20 having a fastening tape meeting all of the structural and functional limitations of claim 1. (Fig. 8)

With respect to **claim 61**: The phrase "and/or" is interpreted in an equivalent manner herein to the phrase as if it were written in proper alternative form. Tanzer discloses a method for closing a diaper meeting all of the structural and functional limitations of claim 55 inasmuch as Tanzer discloses a diaper 20 having a fastener that meets all of the structural limitations, wherein for closing the diaper 20, a connection is established between a closing area 82 of a diaper-fastening tape 60 on a diaper wing and a landing zone 86, preferably on a front section, wherein a surface area of a textile back sheet is selected as the landing zone. (¶¶0075)

With respect to **claim 64**: Tanzer discloses a method for producing a diaper-fastening tape meeting all of the structural and functional limitations of claim 1, wherein at first spots 64 are applied via (i.e. onto) a plurality of diaper-fastening tapes that are adjacent in the machine direction and then the tapes are separated to yield their final shape. (¶¶0097-0099)

With respect to **claim 66**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper 20 or an incontinence pad, having a fastening area in the form of manufacturer's bond edge 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item 20 (¶¶0075), having a mechanical fastening system comprising two components, fastener islands 64 having hooks thereon and adhesive areas on layer 78. The fastening system comprises spot-shaped carriers, said islands 64, within a carrier area defined by said carriers 64, which carry a component of the mechanical fastening system, i.e. said hooks, and are in turn fastened to a fastening carrier in the form of first flexible layer 72 wherein a bending line in the form of a "well-defined line of flexibility" runs through the carrier area and wherein when

viewed from the fastening area, the closing area 82 initially at least partially comprises hooks and otherwise an open adhesive surface. (Fig. 6)

With respect to **claim 67**: The intermediate carrier in the form of backing material 68 of said spots 64 in the rectangular shape disclosed by Tanzer, is completely separated into two or more strips along the first direction, wherein the strips are rectangular and thus lie parallel to the first direction and substantially parallel to one another (§10061), whereas in the second direction along the profile of the strips, the strips are provided with an edge variation in the form of a change in elevation between the island edge and the top of flexible layer 78. (Fig. 6)

With respect to **claim 68**: Tanzer discloses a fastening tape 60 for a hygiene item, in particular for a baby diaper 20 or an incontinence pad, having a fastening area in the form of manufacturer's bond end 84 for permanent attachment to the hygiene item and having a closing area in the form of user's end 82 for simultaneous detachable joining to a surface of the hygiene item (§10075), having a mechanical fastening system comprising two components, islands 64 and adhesive areas of layer 78. The system comprises spot-shaped carriers 64 within a carrier area defined by said carriers 64, which carry a hook component of the mechanical fastening system and are in turn fastened to a fastening carrier in the form of first flexible layer 72, comprising a plurality of spots, in particular edge spots with a sharp-edged edge section inasmuch as Tanzer discloses that the islands 64 are rectangular (§10061), which contain sharp edges with corner sections.

With respect to **claim 69**: The fastening tape disclosed by Tanzer meeting all of the structural

and functional limitations of claim 68 comprises separated hooks on the edge section of the islands/carriers 64. (Fig. 6)

Claim Rejections - 35 USC § 103

29. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

31. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

32. Claim 65 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al ('144).

With respect to **claim 65**: Tanzer discloses that there are rows of islands that extend substantially the length of the tape 60. Thus, though Tanzer does not explicitly disclose that, when separating the tapes, edge spots extending over a bordering edge are severed, Tanzer fairly suggests spots that are located on the edge of a tape fastener and thus suggests a method wherein when separating the individual fastening tapes, edge spots extending over a bordering edge are severed by virtue of disclosing the step of cutting a continuous roll of fastener material, which would inevitably result in severing of said edge spots. It would therefore be obvious to one of ordinary skill in the art to modify the method of Tanzer such that, when separating the individual fastening tapes, edge spots extending over a bordering edge are severed, so that when the tapes are in use they do not inadvertently or prematurely attached to undesirable portions of the diaper.

33. Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanzer et al ('144) in view of Cinelli et al (U.S. Patent Application Publication No. 2003/0212416).

With respect to **claim 59**: Examiner interprets separation force herein as referring to peel force. Tanzer does not disclose that the adhesive of the free adhesive layer is selected in the closing area such that the adhesive adheres to a back sheet of the diaper with a separation force of more than 0.05 N/cm^2 , preferably more than 0.1 N/cm^2 , especially preferably more than 0.15 N/cm^2 . Cinelli discloses a hydrogel adhesive having a peel force of $0.1\text{-}5 \text{ N/cm}^2$, which overlaps the claimed range. Cinelli discloses that such adhesive has enhanced cohesiveness which

would ensure the fastener tape remains securely fastened during movement of the wearer. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Tanzer by using the adhesive of Cinelli in the closing area to provide enhanced cohesiveness and securement during wear. ('416, ¶¶0012,0110)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

